IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1724 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI KALAJI JAMAJI

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioners

MR. H.C. PATEL, for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/4/2001

C.A.V. JUDGEMENT

Koli Kalaji Jamaji and others, petitioners, have filed this writ petition under Article 227 of the Constitution of India challenging the order of the Secretary, Revenue Department (Disputes), Ahmedabad dated 17.9.1985 and also notice under Section 152 of the Land

Revenue Code dated 15.4.1986 issued by the Mamlatdar, Dhanera, by which he has ordered them to pay penalty for unauthorised occupation of river site of Sipu.

2. The facts giving rise to this petition are as under:-

2.1 In the petition it has been stated that the petitioners are the owners of lands in village Nani Mahudi and their lands were acquired by the State Government for Sipu Irrigation Project. The petitioners were not paid compensation for the acquisition of their lands nor were they given any alternative site for the above lands.

2.2 It was further stated that as the petitioners have not received any compensation or alternative site, they requested to the Executive Engineer (Sipu Dam), Dhanera, to give them river site for the purpose of cultivation for their cattle feeds. The Executive Engineer, Sipu Project, Dhanera, permitted them to cultivate the same at the river site for the cattle.

2.3 It was further stated that some unauthorised persons also cultivated the said land. The unauthorised persons cultivated potatos and made profits out of the said cultivation.

2.4 It was further stated that the Executive Engineer, Sipu Project, Rehabilitation and Land Acquisition Department by its letter dated 20.2.1985 informed the Collector, Banaskantha that some unauthorised persons had cultivated river-site and had made profits out of the said cultivation and requested to do needful in the matter and recover necessary penalty from the unauthorised occupants. The Deputy Collector by his letter dated 26.2.1985 ordered the Mamlatdar, Dhanera to take necessary action in the matter and requested him to penalty from the persons who have unauthorisedly occupied the land and cultivated the potatoes. He has also requested the Mamlatdar, Dhanera, only to take possession from the petitioners and requested to consult the Executive Engineer, Sipu Project.

2.5 In view of the same, the Mamlatdar, Dhanera, gave notice to the petitioners dated 13.3.1985 which was received by the petitioners on 9.4.1985. The petitioners submitted their reply on the same day in person to the Mamlatdar that the notice dated 13.3.1985 was received by them on 9.4.1985 as the land was acquired before three years and there as no gaucher land available for the

cattle and as the petitioners had not occupied other lands so far and therefore requested the Mamlatdar to take land revenue according to rules and pardon them from levying any penalty.

2.6 In spite of the aforesaid request, the Mamlatdar by his order dated 11.4.1985 directed the petitioners to pay penalty ten times the non-assessment of the land.

2.7 Being aggrieved and dissatisfied with the aforesaid order, the petitioner preferred Revision Application No. 341 of 1985 under Section 211 of the Bombay Land Revenue Code to the Secretary, Revenue Department (Appeals), State Government, Ahmedabad who by his order dated 17.9.1985 rejected the revision application of the petitioners.

2.8 Pursuant to the aforesaid order of the Secretary, Revenue Department (Appeals), the petitioners received a notice under Section 152 of the Land Revenue Code dated 15.4.1986 issued by the Mamlatdar, Dhanera, by which he has ordered the petitioners to pay penalty for unauthorised occupation of river site of Sipu.

3. Being aggrieved and dissatisfied with the aforesaid order, the petitioners preferred this petition before this court under Articles 226 and 227 of the Constitution of India.

4. Mr. K.S. Zaveri, learned advocate for the petitioners made the following contentions. It was submitted that the Secretary failed to appreciate that the petitioners were permitted by the Executive Engineer to cultivate the said lands for the cultivation of Raja Kay which is feeding crop for the cattle. He has further stated that on various grounds the order of the Secretary, Revenue Department is challenged. He has relied on the judgement of this court in the case of HARIJAN VITHALBHAI MADHAVBHAI VS. KRISHNAMURTHY, THE COLLECTOR, BARODA & ANR. reported in 1975 G.L.R. 525. He has relied on the observations on pages 528-529 at paragraphs 8 and 9 which are reproduced as under:

"Para 8 - Section 61 in terms applies to a person who has ceased to be entitled to the use or occupation of the Government land and who thereafter continues to be in occupation thereof. That is exactly what applies to the petitioner's case. He is, therefore, subjected to two liabilities arising from Sec. 61. His first liability is to pay the assessment in respect of

the land in question for the entire period of his unauthorised occupation. His second liability is to pay the fine if the Collector in his discretion directs him to do so. The norm as to fine which should be imposed upon an authorised occupant has been laid down by Sec. 61. It may be Rs. 5/- or a sum equal to 10 times the assessment payable by him for one year whichever is higher. This norm applies to a land which has been taken for the purposes of cultivation. It is not in dispute before me that the land in question has been taken by the petitioner for the purposes of cultivation. The annual assessment of the land in question is Rs. 10/12ps. Ten times the assessment would mean a sum of Rs. 101/20ps. If the Collector so directs him he is liable to pay a maximum fine of Rs. 101.20 ps because it is higher than the other amount specified in Sec. 61. In the instant case the Collector has imposed upon the petitioner a fine of Rs. 11,250/-. In my opinion it is in contravention of Sec. 61.

Para 9 - In my opinion, therefore, the term as to price and fine which the Collector has attached to the grant is not in conformity with the provisions of Section 62 read with Rule 37 and Sec. 61 Therefore, that term is liable to be quashed and set aside. It is needless for me to say that it is open to the Collector to fix afresh the price of the land under Sec. 62 and the amount of fine under Sec. 61 of the Bombay Land Revenue Code."

4.1 He has also relied on the judgement of the Supreme Court in the case of M/S. HINDUSTAN STEEL LTD. VS. THE STATE OF ORISSA reported in AIR 1970 SC 253 in which at para 7 on page the Hon'ble Supreme Court observed as follows:

"But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether

> penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

5. In view of the aforesaid two decisions of the High Court and the Supreme Court, he has stated that the authority ought not to have imposed penalty because the conduct of the petitioner is not contumacious and there is no wilful disregard of the liability by the petitioner. He has also stated that the order of the authority is contrary to and inconsistent with the judgement of the Hon'ble Supreme Court in Hindustan Steel Ltd.'s case (supra) and this court in Vithalbhai's case (supra).

6. When the matter reached hearing before this court on 19.8.1987 this court issued notice and also granted interim relief and thereafter on 27.8.1987 this court has admitted the matter. Thereafter the matter reached hearing before me. On behalf of the Government learned A.G.P. tried to support the order of the Secretary, Revenue Department and the reasoning given by him in this behalf.

7. In my view the order of the authority is contrary to and inconsistent with the judgement of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. (supra) as well as this Court in the case of Vithalbhai (supra) and the petition is required to be allowed.

8. In the result, the petition is allowed. The order of the authority below is set aside and I further direct the mamlatdar to impose proper penalty prescribed under the law particularly in the light of the judgement of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. (supra) as well as the judgement of this Court in the case of Vithalbhai (supra). Rule made absolute. No order as to costs.

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